

DETAILED ACTION

Claims 1 and 2 are pending in the application.

This action is in response to applicants' amendment filed November 19, 2007.

Claims 1 and 2 have been amended and claims 3-20 have been canceled.

Response to Amendment

Applicant's amendments filed November 19, 2007 have been fully considered with the following effect:

1. The applicants' amendments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled paragraph 3) in the last office action, which are hereby **withdrawn**.
2. With regards to the 35 U.S.C. § 102, anticipation rejection labeled paragraph 4) in the last office action, the applicants' arguments have been considered with the following effect. The applicants' stated that the Shiraishi et al., WO 2003/14105 discloses racemic compounds and methods for making them. However, the compounds of Shiraishi includes "each of the optical isomers as well as the racemic mixture". Formulation Examples 1-6 further describe the optical isomers of the instant invention.

Claims 1 and 2 are rejected under 35 U.S.C. 102(a and e) as being anticipated by Shiraishi et al., WO 2003/14105, for reasons of record and stated above.

3. The applicants' amendments and arguments are sufficient to overcome the provisional obviousness-type double patenting rejection of claims 1 and 2 over claim 28

of copending Application No. 10/484,762 in the last office action, which is hereby **withdrawn**.

In view of the amendment dated November 19, 2007, the following new grounds of rejection apply:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1 and 2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment to the definition of R² which was amended to include the moieties OR, -SR, -SOR, and -SO₂R and R⁵ which was amended to include the moieties -SOR and -SO₂R wherein R is defined as a substituent is not described in the specification with respect to formula (I).

Applicant is required to cancel the new matter in the reply to this Office action.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brenda L. Coleman/
Primary Examiner, Art Unit 1624